IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 218 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VADTAL SWAMINARAYAN SAMSTHAN TRUST
Versus
COMMISSIONER OF INCOME-TAX

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Appearance:
1. INCOME TAX REFERENCE No. 218 of 1994
MR KA PUJ for Petitioner
MR AKIL KURESHI with MR MANISH R BHATT for Respondent

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 17/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following questions have been referred for our opinion in respect of assessment years 1977-78 to 1979-80 :-

"(1) Whether, on the facts and in the circumstances of the case, the Trust is entitled to recoup the deficit of Rs.14,82,694/-, Rs.4,56,852/- and Rs.2,34,827/- respectively for the assessment years 1977-78, 1978-79 and 1979-80 from the subsequent year's income, even though the ITO considered the income `nil' ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in interpreting the Bombay Bench order in the case of Balkani Bari to come to the conclusion that the object of the said trust might be business and based its order solely on that ground ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in deciding that only trust which are having income from business can get set off and carry forward of loss against the income of the subsequent year and the Trust, like the appellant, which has no such income has no right in law in recoup its deficit against subsequent year's income ?"

2. We have heard Mr KA Puj, learned counsel for the appellant-assessee and Mr Akil Kureshi, learned counsel for the revenue.

3. Although three different questions are referred, the learned counsel agree that the controversy involved herein is one and the same as to whether the expenditure incurred in earlier years will be adjusted against the income in the subsequent years. This very controversy came up before this Court for consideration in CIT vs. Shri Plot Swetamber Murti Pujak Jain Mandal, (1995) 211 ITR 293. This Court laid down the following principle :-

"There is nothing in the language of section 11(1)(a) of the Act to indicate that the expenditure incurred in the earlier year cannot

be met out of the income of the subsequent year and utilization of such income for meeting the expenditure of the earlier year, would not amount to such income being applied for charitable or religious purposes. Income derived from trust property has to be determined on commercial principles and if commercial principles for determining the income are applied, it is but natural that the adjustment of the expenses incurred by the trust for charitable and religious purposes in the earlier year against income earned by the trust in the subsequent year will have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year in which such adjustment has been made having regard to the benevolent provisions contained in section 11 of the Act and will have to be excluded from the income of the trust under section 11(1)(a)."

4. Following the aforesaid decision, our answer to question No. 1 is in the affirmative i.e. in favour of the assessee and against the revenue. Our answer to question No. 2 is in the negative i.e. in favour of the assessee and against the revenue. Our answer to question No. 3 is also in the negative i.e. in favour of the assessee and against the revenue.

5. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-